S.B. CIVIL WRIT PETITION NO.3759/2005
Mukesh Kumar & Anr.
Vs.
CJ(SD), Laxmangarh & Ors.

DATE OF ORDER : 25.5.2007

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

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Shri R.K. Mathur for the petitioners.
Shri Gaurav Gupta for the respondents.

Heard learned counsel for the parties.

The petitioner has challenged the order dated 21.2.2005 passed by the learned trial court while accepting the application of the plaintiff decree-holder. Application was filed on the ground that while decreeing the suit, the learned court had directed that the defendant could not interfere in the use of the street adjoining the property of the parties nor could open any

gate/window therein and the gate/window open from before should be closed down and the window of the plaintiff should be allowed to remain open and accordingly the decree should be prepared. In the decree that was originally prepared, although the other part of the direction was indicated but the direction with regard to removal of “chajja” was not correctly indicated. Though the word “chajja” was incorporated in the decree but the fact that the direction that it should be removed was left out from being mentioned therein. In the application, prayer to that effect was made that the application may be allowed by invoking Section 152 CPC.

Learned counsel for the petitioner argued that this amounted to review of the original judgment as the

nature of amendment/direction in the decree did not fall within the purview of clerical error which is the scope of Section 152 CPC.

Learned counsel for the respondent has opposed the writ petition and prayed that this could not be done by the court because the appeal against the original decree has already been preferred. Learned counsel for the respondent also submitted that the decree passed did not correctly indicate the ultimate relief granted by the court in terms of its finding on issue no.5. This is to be read in the light of the finding by the court in that issue in conjunction with the prayer clause as also the ultimate direction. Learned trial court therefore did not commit any error in passing the impugned order.

Having heard counsel for the parties and perused the material on record, I find that the nature of correction which has been made by the trial court is indeed in conformity with the relief granted by the court. The decree is nothing but exposition of the nature of direction given in the judgment passed, and therefore, it has to be prepared in tune with the ultimate order.

On perusal of the certified copy of the site plan and the originally prepared decree by the court which has been produced by learned counsel for the respondent, it appears that the word “chajja” has been indicated in red ink in the map, and therefore, if the court, while passing the order, had intended its removal, the nature of correction which has been directed certainly falls

within the purview of Section 152 CPC. So far as the question of correction is concerned, this does not in any manner restrict or control the scope of the appellate court including its power to pass the interim order.

The writ petition has no substance and is accordingly dismissed.

(MOHAMMAD RAFIQ),J.

Skant/-